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10/804,238

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Jens Ole Brochner Andersen

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EXAMINER

VANATTA, AMY B

ART UNIT

PAPER NUMBER

3765

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|----------------------------------------|-----------|---------------|
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3 MONTHS

12/19/2006

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/804,238

Applicant(s)

ANDERSEN, JENS OLE  
BROCHNER

Examiner

Amy B. Vanatta

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2005 and 09 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 12-23 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5, 26 and 27 is/are allowed.
- 6) ☒ Claim(s) 6-11, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☒ Certified copies of the priority documents have been received in Application No. 09/529,362.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Election/Restriction***

1. Applicant's traversal of the restriction is acknowledged. The traversal is on the grounds that the patent issued with apparatus and product claims, and thus the claims in the reissue directed to the product claims should be examined. This is not found persuasive because the product claims of the reissue application are properly restrictable from the product claims of the patent. It is noted that the product claims of the patent are product-by-process claims. The newly added product claims of the reissue application are drawn to a fabric which may be made by a different process than that of the patent product-by-product claims. Applicant argues that there is no burden to examine the newly added product claims since claims 1-10 of the patent were already examined and a detailed prior art search is not necessary. The examiner notes, however, that the broad product claims as set forth in claims 12-23 have not previously been searched since their scope differs from that of the patent claims, they are classified in a different class, and would require a search which differs from that of the claimed apparatus and product-by-process claims. A three layered hydro-entangled nonwoven fabric was not claimed in the patent, and thus the search for such a nonwoven as recited in the reissue claims presents a burden due to the differing search required.

It should be noted that had these product claims (i.e. as presented in claims 12-23 of the reissue) been presented in the application which became the patent, a

restriction requirement would have been made at that time. Moreover, a reissue applicant's failure to timely file a divisional application covering the non-elected inventions following a restriction requirement is not considered to be error causing a patent granted on elected claims to be partially inoperative by reason of claiming less than the applicant had a right to claim. A reissue application is not a substitute for a properly and timely filed divisional application.

Regarding claim 11, it is noted that claim 11 incorporates all of the limitations of claim 6. Since claim 6 is allowable, and claim 11 incorporates all of the limitations of claim 6, the restriction with regard to claim 11 is withdrawn.

With regard to the restriction of claims 24-25 as drawn to a process for making a fiber web, these claims were properly restrictable from the patent claims in the first office action, since the process was not claimed in the patent and is distinct from the apparatus and product-by-process claims of the patent, and the search required for the process was not required for the patent claims. In the response filed 10/26/05, applicant amends patent claim 6, however, such that it is now a linking claim which links the apparatus of patent claims 1-5 and the process claims 24-25 added in the reissue. In view of this linking claim, claims 24-25 are no longer restrictable from claim 6 and the restriction requirement as to claims 24-25 has been withdrawn.

Thus, claims 1-11 and 24-27 have been examined. Claims 12-23 remain withdrawn from consideration.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 6-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 does not clearly set forth the invention being claimed. Specifically, it is unclear how the structure of the apparatus as recited in lines 4-17 is related to the process steps of lines 20-26. The process recites steps of supplying fibers to first, second, and third forming heads; it is unclear how the forming heads are related to the claimed house with fiber inlets which has wings for distributing the fibers in a nonwoven web form, as recited earlier in the claim.

Claim 11 is indefinite in reciting that the top and the bottom layers comprise the nonwoven fabric of claim 6, and the fabric additionally includes a middle layer of cellulose. Claim 6 has now been amended to recite a three layered fabric, however, which results in claim 11 now reciting a 7 layer fabric (since both the top and bottom layers are recited as comprising the fabric of claim 6, which now recites a 3 layered fabric). Thus, claim 11 is indefinite in view of the amendments made to claim 6. The specification does not disclose or support the claiming of a seven layered fabric.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

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form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Srinivasan et al (US 5,500,281).

Srinivasan et al disclose a method for forming a three-layered hydroentangled web (see Fig. 2) including supplying to a first unit 21 fibers for a bottom layer, supplying to a second unit 21 fibers for a middle layer, and supplying to a third unit 21 fibers for a top layer. The fibers for each layer are disclosed in Example 4 as a mixture of polyvinyl alcohol and rayon (see col. 7, lines 50; col. 8, lines 33-36). Thus, the bottom and top layers comprise “at least synthetic fibers” (polyvinyl alcohol), while the middle layers comprises “at least cellulose fibers” (rayon) as claimed. The units 21 which form the layers of fibers are disclosed as card units, which are “forming heads” to the extent recited in claim 24. The layers are successively laid on top of one another to form a three layered sandwich web, as claimed. A step of hydroentangling the web is disclosed, for forming a strong bond between the fibers (see col. 8, lines 45-47, disclosing that the water jets impart strength through fiber entanglement). A step of heating the web for bonding the fibers and drying is performed by passing the web

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through hot cylinders 31 and 32 (col. 9, lines 13-15). A three layered nonwoven fabric produced by this process is also disclosed, as in claim 25.

6. Claims 24 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Skoog et al (US 6,550,115).

Skoog et al disclose a method for forming a three-layered hydroentangled web (see Figs. 2 and 4) including supplying fibers for a bottom layer 226, supplying fibers for a middle layer 218, and supplying fibers for a top layer 224. The fibers for layers 224 and 226 are disclosed as synthetic fibers (see, e.g., col. 7, lines 38-39). Skoog discloses that layers 224 and 226 may be spunbond or meltblown, made by known continuous filament extrusions processes (col. 7, lines 31-54), which would inherently include a forming head to which the material is supplied and from which the spunbond or meltblown fibers pass. Skoog discloses that the continuous filament extrusion process such as melt-spinning processes may be performed directly in line with the process of Fig. 4, without first being stored on the supply rolls (228,230) which are shown in the embodiment of Fig. 4 (see col. 7, lines 38-43). Thus, the claimed steps of supplying the first and third forming heads with synthetic fiber are disclosed by Skoog. Also, a step of supplying to a second forming head (see head box 212) cellulose fibers for the middle layer 218 is disclosed (see col. 6, lines 46-48). The layers are formed in the forming heads and successively laid on top of one another to form a three layered sandwich web, as claimed (see Fig. 2 and col. 7, lines 38-43). A step of hydro-entangling the web is disclosed, for forming a strong bond between the fibers (see

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hydroentangling unit 236 in Fig. 4). A step of heating the web for bonding (col. 10, lines 63-65) and drying (col. 10, lines 24-25) is disclosed. A three layered nonwoven fabric produced by this process is also disclosed, as in claim 25.

***Allowable Subject Matter***

7. Claims 1-5, 26, and 27 are allowed.
8. Claims 6-11 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. That is, the amendment of claim 6 such that the claim is now a linking claim which is no longer restrictable from claims 24-25 necessitated the examination of claims 24-25 and hence the new grounds of rejection applied to claims 24-25.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



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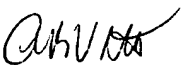
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. This application contains claims 12-23 drawn to an invention nonelected with traverse. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy B. Vanatta whose telephone number is 571-272-4995. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Amy B Vanatta  
Primary Examiner  
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